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Subject: [External] Judges dubious in challenge to FERC fee funding mechanism

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By Alex Guillén

03/22/2018 12:12 PM EDT

Three federal judges on the D.C. Circuit Court of Appeals today expressed doubt that FERC's use of natural gas pipeline fees has biased the agency to rubber-stamp new pipeline applications.

Delaware Riverkeeper Network argued that FERC would want to approve new pipelines to help fund the agency because older pipelines necessarily go offline and stop contributing to FERC's budget.

But the judges appeared skeptical as they questioned whether FERC commissioners or career staff would have that kind of long-term bias toward pipeline approvals because of the agency's funding structure.

"What is the draw for the agency" to differentially approve pipelines, asked Judge Harry T. Edwards, a Carter appointee. "I'm just not getting it."

Government attorneys noted that the fees collected by FERC go to the Treasury's General Fund, and Congress then appropriates money to FERC for its natural gas program, severing the direct causal link.

"The prospect of Congress letting pipeline regulation go out of business for lack of funding seems implausible," said Judge Gregory Katsas, a Trump appointee.

The judges also noted that FERC has operated this way for decades and that more than two dozen other federal agencies rely on similar fee funding systems. Such historical and common usage of that scheme "cuts against you," Katsas told Riverkeeper's attorney.

A lower court judge previously ruled in favor of FERC.

WHAT'S NEXT: The court will issue its ruling in the coming months.

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